United Nations CMW/C/LSO/CO/1*

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Concluding observations on the initial report of Lesotho**

1. The Committee considered the initial report of Lesotho (CMW/C/LSO/1) at its 310th and 311th meetings (see CMW/C/SR.310 and 311), held on 12 and 13 April 2016. At its 322nd meeting, held on 20 April 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of the State party, which was prepared in response to the list of issues prior to reporting (CMW/C/LSO/QPR/1). The Committee appreciates the open and constructive dialogue held with the high-level delegation, which was headed by the Minister of Home Affairs, Lekhetho Rakuone, and which included representatives of the Ministry of Home Affairs, the Ministry of Law, Constitutional Affairs and Human Rights, the Ministry of Foreign Affairs and International Relations and the Permanent Mission of Lesotho to the United Nations and other international organizations in Geneva. The Committee welcomes the additional oral information provided by the delegation.

3. The Committee notes that some countries where Basotho migrant workers are employed are not parties to the Convention, which may constitute an obstacle to the enjoyment by migrant workers of their rights under the Convention.

B. Positive aspects

4. The Committee notes with appreciation the ratification of or accession to the following instruments:

(a) The International Convention for the Protection of All Persons from Enforced Disappearance, on 6 December 2013;

(b) The Convention on the Rights of Persons with Disabilities, on 2 December 2008;

* Reissued for technical reasons on 8 June 2016.

** Adopted by the Committee at its twenty-fourth session (11-22 April 2016).

(c) The International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182), on 14 June 2001;

(d) The ILO Occupational Safety and Health Convention, 1981 (No. 155), on 1 November 2001;

(e) The ILO Minimum Age Convention, 1973 (No. 138), on 14 June 2001;

(f) The ILO Abolition of Forced Labour Convention, 1957 (No. 105), on 14 June 2001.

5. The Committee welcomes the adoption of the following legislative measures:

(a) The Anti-Trafficking in Persons Act, 2011, and the Anti-Trafficking in Persons Regulations, 2015;

(b) The Children's Protection and Welfare Act, 2011.

6. The Committee also welcomes the following policy measures:

(a) The Action Programme for the Elimination of Child Labour 2013-2017;

(b) The National Anti-Trafficking in Persons Strategic Framework and Action Plan 2014-2016.

C. Principal subjects of concern and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

7. The Committee notes that in the State party the Convention can only take effect at the domestic level following approval by the National Assembly. The Committee is concerned that the provisions of the Convention have not been fully incorporated into domestic law notwithstanding efforts to review existing legislation in order to harmonize it with the Convention.

8. **The Committee urges the State party to take the steps necessary to fully incorporate the Convention into its domestic legislation and ensure that its national laws and policies are in line with the provisions of the Convention.**

Articles 76-77

9. The Committee notes that, although the State party has indicated that it is considering making the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive and consider communications from States parties and individuals concerning violations of rights established by the Convention, it has not yet done so.

10. **The Committee recommends that the State party consider making the declarations provided for in articles 76 and 77 of the Convention.**

Ratification of relevant instruments

11. The Committee commends the State party for ratifying or acceding to all core human rights treaties, as well as a number of ILO instruments. It notes, however , that the State party has not yet ratified the following: the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention on the Rights of the Child on a communications procedure; the Optional Protocol to the Convention on the Rights of Persons with Disabilities; the ILO Minimum

Wage Fixing Convention, 1970 (No. 131); the ILO Private Employment Agencies Convention, 1997 (No. 181); the ILO Domestic Workers Convention, 2011 (No. 189); and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

12. **The Committee urges the State party to consider ratifying or acceding to the above instruments as soon as possible.**

Comprehensive policy and strategy

13. The Committee regrets that the State party has not provided sufficient information on the specific measures it has taken to implement the Convention, in particular with respect to the Lesotho National Migration and Development Policy 2013.

14. **The Committee urges the State party to include it its next periodic report updated information, supported by statistics, on the specific measures it has taken to implement the rights of migrant workers as set out in the Convention.**

Coordination

15. The Committee is concerned about information in the State party report indicating that no single government ministry or institution is responsible for intergovernmental coordination regarding the implementation of the Convention.

16. **The Committee urges the State party to establish an appropriate body, at the interministerial level, with a clear mandate and sufficient authority to coordinate all activities related to the implementation of the Convention, across sectors, at the national, regional and local levels. The State party should ensure that the coordinating body is provided with the human, technical and financial resources necessary for its effective operation.**

Data collection

17. The Committee welcomes the adoption of a framework for collecting migration-related data and the State party's efforts to establish the system for collecting data on migration flows proposed in the Lesotho National Migration and Development Policy 2013. It is concerned, however, at the lack of available statistical data disaggregated by sex, age and nationality relating to migrant workers in an irregular situation and on cases of expulsion. The Committee is particularly concerned that the State party's Department of Immigration does not keep comprehensive records of migration flows.

18. **The Committee recommends that the State party establish, as a matter of urgency, a comprehensive system for collecting data on migration covering all aspects of the Convention, particularly on migrant workers in an irregular situation, including cases of expulsion. The Committee encourages the State party to compile information and statistics that are disaggregated by sex, age, nationality and migratory status, in line with target 17.18 of the Sustainable Development Goals,[1] in order to facilitate the adoption of measures to effectively implement the provisions of the Convention.**

[1] The 2030 Agenda for Sustainable Development was adopted by the General Assembly in its resolution 70/1 on 25 September 2015. It comprises 17 Sustainable Development Goals, which are further broken down into targets.

Independent monitoring

19. While noting the existence of a Human Rights Unit in 1995 and the passing of the Sixth Amendment of the Constitution, which provides for the establishment of a national human rights institution, the Committee is concerned that the Human Rights Commission Bill, 2015, which would operationalize such an institution, has yet to be passed.

20. **The Committee requests the State party to:**

(a) **Adopt the Human Rights Commission Bill as soon as possible and establish a national human rights institution, ensuring that it has a clear mandate to protect and promote human rights, including the rights of migrant workers and members of their families as set out in the Convention, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles);**

(b) **Ensure that adequate financial and human resources are made available to the Human Rights Commission to enable it to effectively discharge its mandate.**

Training on and dissemination of information about the Convention

21. The Committee notes that, as indicated in the State party report, the Human Rights Unit of the State party has facilitated human rights trainings, including educational campaigns on the prohibition of child labour, for law enforcement officers, members of parliament and the judiciary, and teachers. The Committee also notes the delegation's assertion that the State party has conducted trainings for judges on the general application of treaties and made efforts to involve the media in disseminating information about the Convention. The Committee is concerned, however, at the limited provision of migration-specific training programmes on the Convention targeting relevant stakeholders such as judges, immigration officers and other law enforcement officials. The Committee is also concerned at the challenges to disseminating information about the Convention more widely.

22. **The Committee recommends that the State party:**

(a) **Ensure that comprehensive, migration-specific human rights training programmes are available to all public officials working in the area of migration, in particular immigration officers and law enforcement officials, as well as judges, prosecutors, relevant consular officers, civil servants, local officials and social workers;**

(b) **Intensify efforts to ensure access by migrant workers to information and guidance on their rights under the Convention in all commonly used languages in the country, in particular through orientation courses or seminars prior to employment or departure;**

(c) **Work in close collaboration with civil society organizations and the media to intensify the dissemination of information about the Convention.**

2. General principles (arts. 7 and 83)

Non-discrimination

23. The Committee notes that, according to the State party, national legislation makes no distinction between national workers and migrant workers except for in respect of "matters of control of non-citizens". The Committee is concerned, however, about the lack of information on actual practice and of examples that would make it possible to assess the implementation of the right to non-discrimination pursuant to the Convention.

24. **The Committee recommends that the State party ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy, without discrimination, the rights recognized by the Convention, in accordance with article 7 thereof. The Committee also recommends that the State party provide in its next periodic report information on actual practice in this regard, with relevant examples.**

Right to an effective remedy

25. The Committee notes the information provided by the State party indicating that every person, regardless of nationality, has access to the courts and enjoys the protection of the rights guaranteed by law. The Committee is concerned, however, that no information has been provided on the number of cases or proceedings brought before the courts by migrant workers and members of their families, including those in an irregular situation, which may reflect a lack of awareness of the legal remedies available to them.

26. **The Committee recommends that the State party ensure that, in law and in practice, migrant workers and members of their families, including those in an irregular situation, have opportunities equal to those of nationals of the State party to file complaints and obtain effective redress in the courts in cases where their rights under the Convention are violated. The Committee also recommends that the State party take additional measures to inform migrant workers and members of their families, including those in an irregular situation, about the judicial and other remedies available to them in cases of violations of their rights under the Convention.**

3. Human rights of all migrant workers and members of their families (arts. 8-35)

Labour exploitation and other forms of ill-treatment

27. The Committee is concerned about the lack of information in the State party report on cases of exploitation of migrant workers in the State party, including those in an irregular situation. Notwithstanding the information provided by the delegation during the dialogue on past incidents of xenophobia, ill-treatment and violence directed at Chinese migrant workers and members of their families, the Committee remains concerned at reports of negative attitudes towards migrant workers of Asian origin and the lack of comprehensive measures to address xenophobia in the State party.

28. **The Committee recommends that the State party:**

(a) **Increase labour inspections and prosecute, punish and sanction persons or groups exploiting migrant workers or subjecting them to forced labour and abuse, especially in the informal economy, in line with target 8.8 of the Sustainable Development Goals;**

(b) **Provide specific information in its next periodic report on the exploitation of migrant workers, including those in an irregular situation;**

(c) **Provide data disaggregated by age, sex and nationality on incidents of xenophobia, ill-treatment and violence directed at migrant workers and members of their families, particularly Asian migrant workers;**

(d) **Intensify efforts to combat xenophobia, including by prosecuting perpetrators and conducting awareness-raising campaigns, and provide assistance to victims.**

Due process, detention and equality before the Courts

29. The Committee notes information provided by the State party regarding measures to ensure that, in criminal and administrative proceedings, including expulsion proceedings, migrant workers and members of their families, in particular those in an irregular situation, are provided with access to consular assistance and that due process is guaranteed. The Committee is concerned, however, that migrant workers in an irregular situation awaiting expulsion are subjected to detention, often detention facilities of the Police and Correctional Service where convicted persons or pretrial detainees are held.

30. **In the light of its general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families, the Committee recalls that administrative detention should be used only as a last resort, and recommends that the State party consider alternatives to administrative detention. It recommends that the State party:**

(a) **Include in its second periodic report detailed disaggregated information on the number of migrant workers detained for immigration offences and the place, average duration and conditions of their detention;**

(b) **Ensure that migrant workers detained for violations of immigration law are not detained with persons accused or convicted of a crime;**

(c) **Ensure that the minimum guarantees enshrined in the Convention are assured with regard to criminal or administrative procedures against migrant workers and members of their families.**

Consular assistance

31. While noting the consular and diplomatic assistance provided by the State party to migrant workers, particularly those working in South Africa, the Committee is concerned that not enough practical information has been made available to the Committee on the specific assistance offered to migrant workers and members of their families to ensure the protection of their rights.

32. **The Committee recommends that the State party ensure that all migrant workers and members of their families have recourse to consular support for the protection of the rights set out in the Convention. It also recommends that the State party ensure that its embassy and consulate personnel have appropriate knowledge about the laws and procedures in force in countries where Basotho migrant workers are employed.**

Remuneration and conditions of work

33. The Committee notes that migrant workers in the State party are protected under the principle of equal pay for work of equal value. The Committee also notes the efforts by the State party to conduct regular labour inspections in this regard. The Committee is concerned, however, at the lack of data on the actual cases involving non-compliance with the principle of equal pay for work of equal value by employers of migrant workers and on the working conditions of migrant workers.

34. **The Committee urges the State party to:**

(a) **Collect data on cases involving non-compliance with the principle of equal pay for work of equal value, including sanctions imposed on non-compliant employers;**

(b) **Ensure that migrant workers enjoy treatment not less favourable than that which applies to nationals in respect of remuneration and that this is strictly**

enforced through the conduct of regular and unannounced labour inspections in sectors where migrant workers are employed, in line with target 8.8 of the Sustainable Development Goals.

Social security

35. The Committee is concerned that there is no agreement between the State party and South Africa on social security, including pension schemes, notwithstanding the large number of Basotho migrant workers in South Africa. The Committee takes note, however, of the delegation's assertion that the State party is in the process of negotiating a social security arrangement with South Africa.

36. **The Committee recommends that the State party expedite negotiations with South Africa on the introduction of social security arrangements ensuring that Basotho migrant workers in South Africa enjoy the same treatment granted to nationals in so far as they fulfil the requirements provided for in the applicable legislation of South Africa, the State of employment, in line with article 27 of the Convention.**

Birth registration and nationality

37. The Committee welcomes the signing of a declaration of intent between the State party and South Africa establishing the Lesotho Special Permit, to regularize unskilled Basotho migrant workers in South Africa. The Committee is concerned, however, that, as the number of Basotho migrant workers migrating to South Africa increases, children born to these migrant workers are at risk of statelessness as there is no mechanism to ensure systematic consular birth registration.

38. **The Committee recommends that the State party:**

(a) **Intensify efforts, including in the context of the Lesotho Special Permit scheme and the provision of consular services, to ensure that all children of Basotho migrant workers abroad, particularly in South Africa, are registered and issued with personal identity documents, in line with target 16.9 of the Sustainable Development Goals;**

(b) **Ensure that its consular offices in South Africa raise awareness about the importance of birth registration among Basotho migrant workers and members of their families, especially those in an irregular situation;**

(c) **Intensify efforts for the implementation of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness**

Education

39. The Committee notes that the Education Act of 2010 ensures for every child of school age, including children of migrant workers, the right to free and compulsory access to primary education. However, the Committee regrets the lack of information concerning the general situation of children of migrant workers in the State party with respect to access to education.

40. **The Committee recommends that the State party conduct a nationwide study and provide information in the next periodic report on the general situation regarding access to education by children of migrant workers in the State party.**

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)

Right to vote and to be elected in the State of origin

41. The Committee is concerned at the lack of information on the mechanisms in place to ensure that Basotho migrant workers abroad can vote and be elected to office in the State party.

42. **The Committee recommends that the State party provide information in its next periodic report on the exercise by Basotho migrant workers abroad of their right to vote and be elected to office in the State party.**

Family reunification

43. While noting that sections 6 (3) and 7 (2) of the Aliens Control Act 1966 provide for family reunification, the Committee is concerned that the power to order family reunification is largely at the discretion of the minister responsible for administering the Act.

44. **The Committee recommends that, during the review of the Aliens Control Act of 1966, the State party introduce appropriate measures to facilitate the family reunification of migrant workers and members of their families in line with article 44 of the Convention.**

Right to transfer earnings and savings

45. The Committee notes the information provided in the State party report regarding the considerable flow of remittances by Basotho migrant workers to the State party. The Committee also notes the information provided by the State party on the services available for transferring remittances to the State party and the assistance provided by the Employment Bureau of Africa to mine workers working in South Africa. The Committee is concerned, however, at the exorbitant transfer costs, which are pegged at 5 per cent of the amount transferred. The Committee is also concerned at the lack of information regarding similar flows of remittances and the costs incurred by migrant workers in the State party when transferring funds to their countries of origin.

46. **The Committee recommends that the State party:**

(a) **Take measures to reduce the cost of transfer fees for remittances to less than 3 per cent, in line with target 10.c of the Sustainable Development Goals, and to facilitate the transfer of remittances of both migrant workers in Lesotho and Basotho migrant workers abroad, including through bilateral agreements with the relevant countries;**

(b) **Provide detailed information on the flow of remittances sent by migrant workers in the State party to their countries of origin.**

5. Promotion of sound, equitable, humane and lawful conditions in connection with the international migration of workers and members of their families (arts. 64-71)

Children left behind

47. The Committee notes the State party's efforts to secure the welfare of children of Basotho migrants who are left behind in the State party, including through the provision of scholarships. The Committee is concerned, however, at the limited number of such measures and at the number of households headed by children, partly as a result of migration and the scourge of HIV/AIDS. The Committee is also concerned at the lack of

clarity about the measures taken to facilitate the resettlement and reintegration of Basotho migrant workers upon their return, including their reunification with children left behind in the State party.

48. **The Committee recommends that the State party:**

(a) **Conduct nationwide research on children of migrant workers who are left behind by Basotho migrant workers, to establish the demographic profile of this population and enable it to develop appropriate policies and programmes;**

(b) **Adopt a comprehensive strategy to promote and protect the rights of children and families of Basotho migrant workers who are left behind, in particular through education, entrepreneurial, training and community welfare programmes;**

(c) **Provide information in its next periodic report on the measures taken to facilitate the resettlement and reintegration of Basotho migrant workers upon their return, including their reunification with children left behind in the State party.**

Recruitment agencies

49. The Committee notes the State party's commitment to pursuing ethical recruitment principles under the Labour Code of 1992, which regulates the activities of private recruitment agencies in the State party. The Committee is concerned, however, that some private recruitment agencies, on behalf of employers, do not report work-related injuries sustained by employees and refuse to repatriate the remains of deceased employees to their countries of origin.

50. **The Committee recommends that the State party take the following measures:**

(a) **Reinforce the regulatory regime for private recruitment agencies and strengthen the existing licensing system for recruitment agencies during the ongoing review of the Labour Code of 1992, to ensure the rights of migrant workers in accordance with the Convention;**

(b) **Enhance recruitment monitoring and inspections to prevent private recruitment agencies from exploiting migrant workers and members of their families;**

(c) **Ensure that private recruitment agencies provide complete information to individuals seeking employment abroad and that they guarantee the effective enjoyment of all agreed employment benefits, in particular salaries;**

(d) **Investigate and prosecute illegal practices by recruiters, with a view to punishing those involved in exploitative practices.**

Illegal or clandestine movements and employment of migrant workers in an irregular situation

51. The Committee welcomes the significant legislative and regulatory measures adopted by the State party to combat trafficking in persons, such as the Anti-Trafficking in Persons Act, 2011, and the Anti-Trafficking in Persons Strategic Framework and Action Plan 2014-2016, which are aimed at eradicating all forms of trafficking in persons in the State party. The Committee also welcomes the joint establishment with South Africa of a cross-border committee aimed at curbing trafficking, particularly involving unaccompanied children. The Committee is concerned, however, at:

(a) The lack of studies, analyses and disaggregated data available to assess the extent of trafficking in the State party;

(b) The fact that the State party has not yet established a centre or shelter for victims of trafficking, as required by law;

(c) The failure to track child labour owing to the limited number of labour inspectors and the lack of information on the funding of the Child and Gender Protection Unit;

(d) The lack of information on the measures taken to combat sexual exploitation in the State party.

52. **The Committee recommends that the State party:**

(a) **Intensify the systematic collection of data disaggregated by gender, age and origin in order to effectively combat trafficking in human beings and exploitation of prostitution;**

(b) **Step up campaigns aimed at preventing trafficking in migrant workers and protect migrant workers from labour and sexual exploitation, in line with target 5.2 of the Sustainable Development Goals;**

(c) **Improve the training of law enforcement officials, border guards, judges, prosecutors, labour inspectors, teachers, health-care providers and the State party's embassy and consular personnel regarding the struggle against human trafficking;**

(d) **Strengthen mechanisms for investigating cases of child labour and trafficking in persons and for prosecuting and punishing offenders;**

(e) **Provide adequate assistance, protection and rehabilitation to all victims of trafficking, in particular by providing shelters and launching projects aimed at their reintegration and repatriation;**

(f) **Intensify international, regional and bilateral cooperation to prevent and combat trafficking in persons.**

6. Follow-up and dissemination

Follow-up

53. **The Committee requests the State party to include in its next periodic report detailed information on measures taken to follow up on the recommendations contained in the present concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that the recommendations are implemented, including by transmitting them for consideration and action to members of the Government, the legislature and the judiciary, as well as to local authorities.**

54. **The Committee requests the State party to involve civil society organizations in the implementation of the recommendations contained in the present concluding observations.**

Follow-up report

55. **The Committee requests that the State party provide, within two years, that is, by 1 May 2018, written information on the implementation of the recommendations contained in paragraphs 20, 36, 38 and 46 (a) above.**

Dissemination

56. **The Committee requests the State party to disseminate widely the present concluding observations, including to government agencies, the legislature, the judiciary, relevant local authorities, non-governmental organizations, other members of civil society and the general public, so as to increase awareness of them.**

7. Technical assistance

57. **The Committee recommends that the State party further avail itself of international assistance, including technical assistance, to develop a comprehensive programme aimed at implementing the recommendations contained in paragraphs 20, 36, 38 and 46 (a) above and the Convention as a whole. The Committee also calls upon the State party to continue its cooperation with specialized agencies and programmes of the United Nations system, including with the Office of the United Nations High Commissioner for Human Rights on technical assistance and capacity-building with respect to reporting.**

8. Next periodic report

58. **The Committee requests the State party to submit its second periodic report by 1 May 2021 and to include in it information on the implementation of the present concluding observations. Alternatively, the State party may follow the simplified reporting procedure, whereby the Committee draws up and adopts a list of issues that is transmitted to the State party prior to the submission of its next report. The replies of the State party to that list of issues will constitute its report under article 73 of the Convention.**

59. **The Committee draws the State party's attention to its guidelines for the preparation of periodic reports (CMW/C/2008/1) and reminds it that such reports should be in compliance with the guidelines and not exceed 21,200 words (General Assembly resolution 68/268). In the event that a report exceeding the established word limit is submitted, the State party will be asked to shorten the report in accordance with the above-mentioned guidelines. If the State party is not in a position to review and resubmit the report, translation of the report for purposes of examination by the treaty body cannot be guaranteed.**

60. **The Committee requests the State party to ensure the wide participation of all ministries and public bodies in the preparation of its next periodic report (or replies to the list of issues, in the case of the simplified reporting procedure) and, at the same time, to consult broadly with all stakeholders, including civil society, migrant workers and human rights organizations.**

61. **The Committee also invites the State party to submit a common core document, not exceeding 42,400 words, prepared in accordance with the requirements in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents approved at the fifth inter-committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3 and Corr.1).**